SUPPORTING BRIEF.

A.

A-1) The primary duty is obligatory upon all courts, both state and national, to hear and determine assertions upon the Bill of Rights and other constitutional questions and federal questions, which are presented by the record.

Article VI of the Constitution of the United States, (Second Paragraph).

West Chicago Street Railway Co. v. *Illinois ex. rel. Chicago,* 201 U. S. 506 at 519-520.

Coombes v. *Getz,* 285 U. S. 434.

A-2) The order of January 20th as adhered to on March 9, 1943 by the Supreme Court of Illinois, is final for purposes of review by this Court.

Central Union Telephone Company v. *City of Edwardsville,* 269 U. S. 190.

Largent v. *State of Texas,* 63 S. Ct. 667, 668.

Jamison v. *State of Texas,* 63 S. Ct. 669, 671.

Wright v. *Risser,* 378 Ill. 72, 379 Ill. 539.

A-3) The cryptic manner of order used by the Supreme Court of Illinois to dispose of the constitutional questions (Tr. 61), does not prevent this Court from exercising its power to review the denial of said constitutional and federal rights to your petitioners.

Martin v. *City of Struthers, Ohio,* 63 S. Ct. 862, 863, Footnote 2.

Amendment 14, Section 1 of the Constitution of the United States.

B.

The Supreme Court of Illinois so vested with obligatory jurisdiction to hear and determine this direct appeal because of constitutional questions presented by this record, has been arbitrary and inconsistent and has denied to your petitioners an equal application of the law, by the entry of its said order. These are cases where that Court has exercised jurisdiction on direct appeal to decide constitutional and trust questions. They involve fiduciary and trust situations:

Winkelman v. *City of Chicago,* 213 Ill. 360 at 362.
Babcock v. *Chicago Railways,* 325 Ill. 16.
Crozier v. *Freeman Coal Mining Co.,* 363 Ill. 362 at 387.
Cohen v. *City of Chicago,* 377 Ill. 221, 230.
Rittenberg v. *Murmingham,* 381 Ill. 267 at 273.
Amendment 14, Section 1 of the Constitution of the United States.

C.

C-1) Writ of mandamus to compel payment of a judgment against City is not a new suit but is a writ in aid of jurisdiction previously attached and becomes indispensable substitute for execution to enforce judgment.

U. S. v. *Council of Keokuk,* 73 U. S. 518.
People v. *Kelly,* 361 Ill. 54 at 59, 60.
Bank of Edwardsville v. *Raffaele,* 381 Ill. 486.

C-2) A City and its officers can have no higher duty than the payment of an honest condemnation debt reduced to judgment, and it is not discretionary with its officers whether or not they shall do so.

People ex rel Farwell v. *Kelly,* 367 Ill. 616 at 619.
People ex rel Mercantile National Bank of Chicago v. *City of Chicago,* 377 Ill. 573.

The People v. *Allied Hotels Corporation,* 381 Ill. 544.

People ex rel Wanless v. *City of Chicago,* 378 Ill. 453.

People ex rel Chicago Title and Trust Co. v. *Village of Glencoe,* 372 Ill. 280.

People ex rel Baird & Warner v. *Lindheimer,* 370 Ill. 424.

Supervisors of Coles County v. *People,* 226 Ill. 576.

People ex rel Farwell v. *Kelly,* 361 Ill. 54.

People ex rel Anderson v. *Village of Bradley,* 361 Ill. 301.

People ex rel Wieboldt Stores v. *City of Chicago,* 368 Ill. 421.

Town of Cicero v. *People,* 105 Ill. App. 106.

C-3) The constitutional provisions asserted by this suit as sources and confirmation of the trust are mandatory and are self-executing without legislation.

People ex rel Markgraff v. *Rosenfield, Director of Public Works and Buildings,* 383 Ill. .....

People v. *Smith,* 374 Ill. 286.

People v. *Kelly, Mayor,* 361 Ill. 54 at 59, 60.

People v. *City of Chicago,* 378 Ill. 453 at 458.

C-4) The refusal by the Supreme Court of Illinois to hear and pass upon the constitutional matters presented to them by this record was an arbitrary abdication from Judicial duty.

Motion to Reconsider (Tr. 67-77).

D.

This suit is based upon a trust in writing established pursuant to and under the protection of the Constitution of Illinois.

D-1) By the Constitution of Illinois the City is required to provide in advance for the fund to pay the purchase price and interest, before it becomes indebted by condemnation land purchase proceedings.

People v. *New York Central Lines,* 381 Ill. 490.
People ex rel Markgraff v. *Rosenfield, Director of Public Works and Buildings,* 383 Ill. .....
Section 12 of article IX of Constitution 1870.
Kane v. *City of Charleston,* 161 Ill. 179 at 183.
East St. Louis v. *Amy,* 120 U. S. 600 at 603 ff.

D-2) By section 13 of article 2 of the Constitution of Illinois, which provides for just compensation for real estate that is purchased by condemnation, there remains vested in each condemnee, a vendor's lien, to secure the purchase money awarded by the condemnation judgment, until just compensation has been fully made to the property owner. The meaning of the Constitution is that purchase price award and accruing interest, are held in trust by the City to accomplish full satisfaction to the property owner.

Chicago & E. I. R. Co. v. *Hay,* 119 Ill. 493 at 502.
People v. *Smith,* 374 Ill. 286 at 288.
The People ex rel Wanless v. *City of Chicago,* 378 Ill. 453 at 458.
Lewis v. *Hawkins,* 90 U. S. 119.
Pomeroy 5th Ed. Equity Jur. Sec. 1250 pages 738, 749.
City of Chicago v. *Collin,* 302 Ill. 270 at 275.

Village of Lansing v. *Sundstrom*, 379 Ill. 121 at 125.

Potter's Dwarris on Statutes and Constitutions at page 387.

Eldridge Drainage and Sewer District v. *Wilcoxson*, 365 Ill. 249 at 251.

Tiffany on Real Property, 3rd Edition (1939), Section 683.

D-3) Accruing interest is part of the just compensation purchase price provided for by the constitution.

Jacobs v. *United States*, 290 U. S. 13 at 16.

Roach v. *Village of Winnetka*, 366 Ill. 578 at 586.

Mecartney v. *City of Chicago*, 273 Ill. 276 at 281 and 284.

City of Chicago v. *1111 LaSalle Building Corporation*, 316 Ill. App. 66.

Norfolk and Western Ry. Co. v. *Board of Education of the City of Chicago*, 114 Fed. (2d) 859 at 862.

Dooley v. *Stipp*, 26 Ill. 86 at 89.

Seaboard v. *U. S.*, 261 U. S. 299.

Brown v. *U. S.*, 263 U. S. 78, 86.

Kieselback v. *Commissioner of Internal Revenue*, 63 S. Ct. 303.

D-4) After judgment on condemnation award becomes final, by Illinois law and the constitution, the municipality is trustee of the accruing interest and the amount of judgment award, until both are fully paid. By the constitution, by the statute and by its voluntary undertaking, the City remains trustee to provide and collect and disburse all funds specified by the pleading of plaintiffs in this record.

Section 13 of Article 2 of Constitution of Illinois.

Section 1 of Eminent Domain Act.

Sections 30 and 32 of Local Improvement Act.

Village of Lansing v. *Sundstrom*, 379 Ill. 121 at 123.

How & Company v. *City of Chicago*, 306 Ill. App. 571.

City of Jacksonville v. *Bankers Life Co.*, 90 F. 2d 141 at 144.

D-5) The liens set up by the Constitution and by the Local Improvement law, to secure payment of purchase price, and the mandatory powers with which the defendants are invested in relation thereto, to be exercised for benefit of these plaintiffs, are made unconditional by said provisions of the State and National Constitutions. They become enforcible and irrevocable upon entry of condemnation judgments. These liens and powers are held by the defendants as trustees, to secure purchase money debts remaining due to the plaintiffs as condemnees. The purchase price award and accruing interest, are held in trust by the City to accomplish full satisfaction to the property owner. These liens and powers and all funds arising therefrom, are shown by this record to be trust res, which this court of equity will administer for the benefit of plaintiffs, until the mandate of just compensation under both the Illinois and National Constitutions, has been fully satisfied by payment of principal and interest, upon the condemnation judgments which are asserted by this record.

Village of Lansing v. *Sundstrom*, 379 Ill. 121 at 125.

Tiffany on Real Property, 3rd Edition (1939), sec. 683.

People ex rel Wanless v. *City of Chicago*, 378 Ill. 453, 459.

City of Chicago v. *McCausland*, 379 Ill. 602 at 606, 607.

Irving Trust Co. v. *Day*, 62 S.C.R. 398 at 401, 314 U. S. 556.

Village of Brookfield v. *Pentis*, 101 Fed. (2d) 516, 521.

Pomeroy on Equity Jur., 5th Edition (1941), secs. 1060, 1160, 1164, 1167.

Perry on Trusts, Vol. II, Sec. 823, p. 1468. (Seventh Edition 1929.)

Duncan v. *Thompson*, 315 U. S. 1.

D-6) The defendants are voluntary active trustees of an express trust, assumed by them wilfully, with all obligations incident to private contract and trust relationship. The trust is evidenced by provisions of the Constitution of Illinois herein relied upon, and by municipal ordinances and condemnation proceedings which are described by the complaint. The plaintiffs are beneficiaries of that trust.

Hall v. *State of Wisconsin*, 103 U. S. 5 at 11.

Richmond v. *Irons*, 121 U. S. 27, 55, 56.

Pulsifer v. *Greene*, 96 Maine 438 at 445.

Burnett v. *West Madison State Bank*, 375 Ill. 402, 406.

People v. *Village of Glencoe*, 372 Ill. 280, 282.

Altschuler v. *Chicago City Bank and Trust Company*, 380 Ill. 137.

D-7) The pleading for plaintiffs in this record, shows that the defendants as such trustees, have assembled and hold designated trust funds, which are applicable so far as they extend to the liquidation of the purchase money award due from the defendants to the plaintiffs, who are beneficial owners of all funds which are described and brought into court by this record.

Petition for Mandamus, Tr. pages 1-5.

Complaint in Chancery, Tr. pages 15 ff.

D-8) In deference to the constitution as asserted by this suit, and the duties of defendants as trustees, every court of equity will disregard all demands for deeds and documents of purported release, made by defendants upon partial payment, (namely, payment after substantial delay, of only a sum at most equal to the amount of the judgment award as entered), and will disregard all such deeds and purported releases so obtained by defendants.

White v. *Sherman,* 168 Ill. 589 at 605, 610.

American etc. v. *City of Avon Park,* 311 U. S. 138 at 145.

Wood v. *Lovett,* 313 U. S. 362 at 371.

Hatch v. *Hatch,* 9 Ves. Jun. 292.

Ingram v. *Lewis,* 37 Fed. (2d) 259 at 263.

In Re Umrich, 190 N. Y. S. 187.

Dinwiddie v. *Self,* 145 Ill. 290 at 292.

Ill. Merchants Trust Co. v. *Harvey,* 335 Ill. 284, 289.

Peter v. *Peter,* 343 Ill. 493 at 500.

Rudin v. *City of Harvey,* 377 Ill. 595.

Northwestern Yeast Co. v. *City of Chicago,* 301 Ill. App. 303, 309.

Fry v. *Pence,* 261 Ill. App. 218, 232 and 239-240.

Slade v. *Slade,* 310 Ill. App. 77, 82, 86-89.

McKeon v. *Pridmore,* 310 Ill. App. 634, 647.

Shirley v. *Ellis Drier Co.,* 310 Ill. App. 518.

City of Chicago v. *Empire Liquidating Corporation,* 370 Ill. 631, 19 N. E. (2d) 576.

Sands v. *Sands,* 112 Ill. 225 at 231.

Restatement of Trusts, Section 217, (b-c-e).

Bogert on Trusts, Section 493.

Scott on Trusts, Section 343.

D-9) In violation of both State and Federal Constitutions, by their conduct after condemnation judgment, and manner of defense to this suit, the defendants seek to accomplish direct impairment and departure from said trust relationship with your plaintiffs, arising under condemnation proceedings for purchase of real estate.

Constitution of Illinois, Art. 2, Section 14.
Article I, Section 10 and the Fourteenth Amendment to Constitution of the United States.
Hyslop v. *Finch*, 99 Ill. 171.
Murray v. *Village of Skokie*, 379 Ill. 112.
Friedman v. *City of Chicago*, 374 Ill. 545.
Wall v. *Chicago Park District*, 378 Ill. 81 at 93.
Kinney v. *Lindgren*, 373 Ill. 415.
Roach v. *Village of Winnetka*, 366 Ill. 578.

This record presents a proper class suit in chancery.

D-10) The named plaintiffs have the right to file this class suit on behalf of themselves and all other persons in like situation. The named plaintiffs are members of that class of persons who own the trust fund in common in equity and have rights and interests in common.

Flanagan and others v. *City of Chicago and others*, 311 Ill. App. 135, 157-160 (leave to appeal denied).
Supreme Tribe of Ben Hur v. *Cauble*, 255 U. S. 356, 363.
Boesenberg v. *Chicago Title & Title Co.*, 128 Fed. (2d) 245, 246.
Haraway v. *Zambie*, 157 S. W. 2d 504.
Hillmer v. *Chicago Bank of Commerce*, 375 Ill. 266 at 268.
Richmond v. *Irons*, 121 U. S. 27 at 44, 51.
39 American Jurisprudence 917, parties section 44 ff.

D-11) The court of chancery has inherent and original control over all trust matters.

These are Illinois Supreme Court decisions:

Cummings v. *Smith,* 368 Ill. 94 at 104, 105.

Norton v. *Hixon,* 25 Ill. 371, 373.

Mettler v. *Warner,* 249 Ill. 341 at 347.

Moore v. *Gar Creek Drainage District,* 266 Ill. 399 at 403.

Springer v. *City of Chicago,* 308 Ill. 356 at 365.

Highway Commissioners of Town of Pennsylvania v. *Durham,* 43 Ill. 86.

Davis v. *City of Chicago,* 333 Ill. 422 at 426.

These are Circuit Court of Appeals decisions:

The Maccabees v. *City of North Chicago,* 125 F. (2d) 330 at 333-334 (C.C.A. 7).

Paul v. *Girard Trust Company,* 124 Fed. (2d) 809 (C.C.A. 7).

Natural Gas Pipeline Company v. *Federal Power Commission,* (C.C.A. 7), 128 Fed. (2d) 481 at 487.

City of Jacksonville v. *Bankers Life Company,* 90 Fed. (2d) 141.

These are cases from other courts:

East Sudbury v. *Belknap,* 18 Mass. 512.

Woodruff v. *State,* 77 Miss. 68.

Attorney General v. *City of Dublin,* 1 Bligh N.R. 312.

D-12) By force of constitutional provision, the chancery powers of Circuit Courts cannot be abridged nor limited by the General Assembly. The condemnation purchase price is a trust res which the Circuit Court has inherent and original power to enforce and to administer in chancery.

Illinois State Constitution, Article VI, paragraph 12.

Howell v. *Moores*, 127 Ill. 67 at 79.

People v. *Smith*, 374 Ill. 286.

Flanagan v. *City of Chicago*, 311 Ill. App. 135.

Rothschild v. *Village of Calumet Park*, 350 Ill. 330 at 338.

Getz v. *City of Harvey*, 118 Fed. (2d) 817.

Hart v. *Central City*, 159 S. W. (2d) 18.

Siefker v. *City of Chicago Heights*, 297 Ill. App. 113 at 117, and cases there cited.

Mruk v. *Mruk*, 379 Ill. 394.

D-13) No statute of limitations is a bar to the claim made by petition for mandamus and by the complaint in chancery in this record. No statute of limitations can begin to run against any fiduciary or trustee, until there has been an unqualified refusal by the trustee to pay the beneficiary: Or until the municipality as trustee, gives notice that it has money in its treasury available to pay the claim with interest to date announced for payment.

Shepard v. *People*, 200 Ill. 508.

Markman v. *Calumet City*, 297 Ill. App. 531, 542.

Bonham v. *People*, 102 Ill. 434, 439.

Fyffe v. *Fyffe*, 292 Ill. App. 539, 550.

Reynolds v. *Sumner*, 126 Ill. 58, 71.

C. & E. I. Ry. v. *Hay*, 119 Ill. 493, 502.

Amy v. *City of Galena*, 7 Fed. 163.

State v. *Ferrell*, 70 P. (2d) 290, 292.

Lewis v. *Hawkins*, 90 U. S. 119 at 126.

D-14) No statute of limitations has become operative against any claim made on behalf of any plaintiff by this record.

Kane v. *City of Charleston,* 161 Ill. 179.

People ex rel. 1111 North LaSalle Building Corporation v. *City of Chicago,* 316 Ill. App. 66.

Bourland v. *Peoria County,* 16 Ill. 538, 546.

Dietrick v. *Greaney,* 309 U. S. 190 at 196.

City of New Orleans v. *Warner,* 175 U. S. 120 at 130.

14 Pomeroy Equity Jurisprudence 1941, 5th Ed. Sec. 1250.

People ex rel. Northup v. *City Council of Chicago,* 308 Ill. App. 284, 296.

Book v. *Eubank,* 311 Ill. App. 312, 319.

Roberts v. *Village of Lyons,* 307 Ill. App. 36, 39.

The Maccabees v. *City of North Chicago,* (C.C.A. 7) 125 Fed. (2d) 330 at 334.

Shepard v. *The People,* 200 Ill. 508.

Hood v. *Commonwealth Trust and Savings Bank,* 376 Ill. 413 at 416, 34 N. E. (2d) 414, 418.

D-15) The claims for plaintiffs made by this suit are not barred by laches.

Finn v. *Wetmore,* 212 Ill. App. 550 at 553.

Chicago & E. I. Ry. Co. v. *Hay,* 119 Ill. 493 at 496.

City of Chicago v. *McCluer,* 339 Ill. 610 at 621.

Puterbaugh Chancery Pleading and Practice, Vol. I, Seventh Edition at page 242, section 159.

People v. *City of Peoria,* 374 Ill. 313 at 322.

Wall v. *Chicago Park District,* 378 Ill. 81 at 95.

McKeon v. *Pridmore,* 310 Ill. App. 634.

Metcalf v. *Bank of Pittsfield,* 312 Ill. App. 385.

Paul v. *Girard Trust Co.,* 124 Fed. (2d) 809 at 813.

Lewin on Trusts, 14 Edition 1939, page 839 ff.

D-16) Plaintiffs should have restoration for all trust money and funds misapplied by the defendants for any purposes not within the language of this trust.

Fichter v. *Milk Wagon Drivers Union*, 382 Ill. 91.
3105 Grand Corporation et als. v. *City of New York, et al.*, 42 N. E. (2d) 475; 288 N. Y. 178.
Lucas v. *Lamb*, 156 S. W. (2d) 634.
Haraway et als. v. *Zambie et als.*, 157 S. W. (2d) 504.
Town of Aurora v. *C. B. & Q. Ry. Co.*, 119 Ill. 246.

Conclusion for Relief.

Your petitioners submit that they did not receive *due process* of law nor *equal protection* of the law, in the Courts of Illinois in this case. The action of Supreme Court of Illinois was such as to call for review and reversal by the Supreme Court of the United States.

WHEREFORE, petitioners pray the allowance of a writ of certiorari to the Supreme Court of Illinois to the end that the cause herein may be reviewed and decided by this Court, and that the decree and orders herein by said Supreme Court of Illinois may be reversed, and for such relief as this Court may direct.

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